

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1041

Introduced by Bourne, 8; Cunningham, 40; Preister, 5; Stuthman, 22

Read first time January 13, 2004

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701.16 and 77-2704.14, Reissue Revised Statutes of
3 Nebraska; to redefine terms; to change provisions
4 relating to sales and use tax exemption; to provide an
5 operative date; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701.16, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 77-2701.16. (1) Gross receipts shall mean the total
4 amount of the sale or lease or rental price, as the case may be, of
5 the retail sales of retailers valued in money whether received in
6 money or otherwise, without any deduction on account of any of the
7 following:

8 (a) The cost of property sold. In accordance with rules
9 and regulations adopted and promulgated by the Tax Commissioner, a
10 deduction may be taken if the retailer has purchased property for
11 some purpose other than resale, has reimbursed his or her vendor
12 for tax which the vendor is required to pay to the state or has
13 paid the use tax with respect to the property, and has resold the
14 property prior to making any use of the property other than
15 retention, demonstration, or display while holding it for sale in
16 the regular course of business. If such a deduction is taken by
17 the retailer, no refund or credit will be allowed to his or her
18 vendor with respect to the sale of the property;

19 (b) The cost of the materials used, labor or service
20 costs, interest paid, losses, or any other expense;

21 (c) The cost of transportation of the property;

22 (d) The amount of any excise or property tax levied
23 against the property except as otherwise provided in the Nebraska
24 Revenue Act of 1967; or

25 (e) The amount charged for warranties, guarantees, or
26 maintenance agreements.

27 (2) Gross receipts of every person engaged as a public
28 utility specified in this subsection or as a community antenna

1 television service operator or any person involved in connecting
2 and installing services defined in subdivision (2)(a), (b), or (d)
3 of this section shall mean:

4 (a) In the furnishing of telephone communication service,
5 other than mobile telecommunications service as described in
6 section 77-2706.02, the gross income received from furnishing local
7 exchange telephone service and intrastate message toll telephone
8 service. In the furnishing of mobile telecommunications service as
9 described in section 77-2706.02, the gross income received from
10 furnishing mobile telecommunications service that originates and
11 terminates in the same state to a customer with a place of primary
12 use in Nebraska. Gross receipts shall not mean (i) the gross
13 income, including division of revenue, settlements, or carrier
14 access charges received on or after January 1, 1984, from the sale
15 of a telephone communication service to a communication service
16 provider for purposes of furnishing telephone communication service
17 or (ii) the gross income attributable to services rendered using a
18 prepaid telephone calling arrangement. For purposes of this
19 subdivision, a prepaid telephone calling arrangement shall mean the
20 right to exclusively purchase telecommunications service that is
21 paid for in advance that enables the origination of calls using an
22 access number or authorization code, whether manually or
23 electronically dialed;

24 (b) In the furnishing of telegraph service, the gross
25 income received from the furnishing of intrastate telegraph
26 services;

27 (c) In the furnishing of gas, electricity, sewer, and
28 water service except water used for irrigation of agricultural

1 lands and manufacturing purposes, the gross income received from
2 the furnishing of such services upon billings or statements
3 rendered to consumers for such utility services; and

4 (d) In the furnishing of community antenna television
5 service, the gross income received from the furnishing of such
6 community antenna television service as regulated under sections
7 18-2201 to 18-2205 or 23-383 to 23-388.

8 Gross receipts shall also mean gross income received from
9 the provision, installation, construction, servicing, or removal of
10 property used in conjunction with the furnishing, installing, or
11 connecting of any public utility services specified in subdivision
12 (2)(a) or (b) of this section or community antenna television
13 service specified in subdivision (2)(d) of this section. Gross
14 receipts shall not mean gross income received from telephone
15 directory advertising.

16 (3) Gross receipts of every person engaged in selling,
17 leasing, or otherwise providing intellectual or entertainment
18 property shall mean:

19 (a) In the furnishing of computer software, the gross
20 income received, including the charges for coding, punching, or
21 otherwise producing computer software and the charges for the
22 tapes, disks, punched cards, or other properties furnished by the
23 seller; and

24 (b) In the furnishing of videotapes, movie film,
25 satellite programming, satellite programming service, and satellite
26 television signal descrambling or decoding devices, the gross
27 income received from the license, franchise, or other method
28 establishing the charge except the gross income received from

1 videotape and film rentals, satellite programming, and satellite
2 programming service when the sales tax or the admission tax is
3 charged under the Nebraska Revenue Act of 1967 and except as
4 provided in section 77-2704.39.

5 (4) Gross receipts for providing a service shall mean:

6 (a) The gross income received for building cleaning and
7 maintenance, pest control, and security;

8 (b) The gross income received for motor vehicle washing,
9 waxing, towing, and painting;

10 (c) The gross income received for computer software
11 training;

12 (d) The gross income received for installing and applying
13 tangible personal property if the sale of the property is subject
14 to tax;

15 (e) The gross income received for labor by a contractor
16 except as provided in section 77-2704.55;

17 (f) The gross income received for services of
18 recreational vehicle parks;

19 (g) The gross income received for labor for repair or
20 maintenance services performed with regard to tangible personal
21 property the sale of which would be subject to sales and use taxes,
22 excluding motor vehicles, except as otherwise provided in
23 subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

24 (h) The gross income received for animal specialty
25 services except (i) veterinary services and (ii) specialty services
26 performed on livestock as defined in section 54-183; and

27 (i) The gross income received for detective services.

28 (5) Gross receipts shall not include any of the

1 following:

2 (a) Cash discounts allowed and taken on sales;

3 (b) The amount of any rebate granted by a motor vehicle
4 or motorboat manufacturer or dealer at the time of sale of the
5 motor vehicle or motorboat, which rebate functions as a discount
6 from the sales price of the motor vehicle or motorboat;

7 (c) Sales price of property or services returned or
8 rejected by customers when the full sales price is refunded either
9 in cash or credit;

10 (d) The amount charged for finance charges, carrying
11 charges, service charges, or interest from credit extended on sales
12 of property or services under contracts providing for deferred
13 payments of the purchase price if such charges are not used as a
14 means of avoiding imposition of the tax upon the actual sales price
15 of the property or services;

16 (e) The value of property taken by a seller in trade as
17 all or a part of the consideration for a sale of property of any
18 kind or nature;

19 (f) The value of a motor vehicle or motorboat taken by
20 any person in trade as all or a part of the consideration for a
21 sale of another motor vehicle or motorboat;

22 (g) Receipts from conditional sale contracts, installment
23 sale contracts, rentals, and leases executed in writing prior to
24 June 1, 1967, and with delivery of the property prior to June 1,
25 1967, if such conditional sale contracts, installment sale
26 contracts, rentals, or leases are for a fixed price and are not
27 subject to negotiation or alteration; or

28 (h) Except as provided in subsection (2) of this section,

1 until October 1, 2002, the amount charged for labor or services
2 rendered in installing or applying the property sold if such amount
3 is separately stated and such separate statement is not used as a
4 means of avoiding imposition of the tax upon the actual sales price
5 of the property.

6 (6) Subsections (1) through (6) of this section terminate
7 on January 1, 2004.

8 (7) Gross receipts means the total amount of the sale or
9 lease or rental price, as the case may be, of the retail sales of
10 retailers.

11 (8) Gross receipts of every person engaged as a public
12 utility specified in this subsection or as a community antenna
13 television service operator or any person involved in connecting
14 and installing services defined in subdivision (8)(a), (b), or (d)
15 of this section means:

16 (a)(i) In the furnishing of telephone communication
17 service, other than mobile telecommunications service as described
18 in section 77-2703.04, the gross income received from furnishing
19 local exchange telephone service and intrastate message toll
20 telephone service; and

21 (ii) In the furnishing of mobile telecommunications
22 service as described in section 77-2703.04, the gross income
23 received from furnishing mobile telecommunications service that
24 originates and terminates in the same state to a customer with a
25 place of primary use in Nebraska;

26 (b) In the furnishing of telegraph service, the gross
27 income received from the furnishing of intrastate telegraph
28 services;

1 (c) In the furnishing of gas, electricity, sewer, and
2 water service, the gross income received from the furnishing of
3 such services upon billings or statements rendered to consumers for
4 such utility services;

5 (d) In the furnishing of community antenna television
6 service, the gross income received from the furnishing of such
7 community antenna television service as regulated under sections
8 18-2201 to 18-2205 or 23-383 to 23-388; and

9 (e) The gross income received from the provision,
10 installation, construction, servicing, or removal of property used
11 in conjunction with the furnishing, installing, or connecting of
12 any public utility services specified in subdivision (8)(a) or (b)
13 of this section or community antenna television service specified
14 in subdivision (8)(d) of this section.

15 (9) Gross receipts of every person engaged in selling,
16 leasing, or otherwise providing intellectual or entertainment
17 property means:

18 (a) In the furnishing of computer software, the gross
19 income received, including the charges for coding, punching, or
20 otherwise producing any computer software and the charges for the
21 tapes, disks, punched cards, or other properties furnished by the
22 seller; and

23 (b) In the furnishing of videotapes, movie film,
24 satellite programming, satellite programming service, and satellite
25 television signal descrambling or decoding devices, the gross
26 income received from the license, franchise, or other method
27 establishing the charge.

28 (10) Gross receipts for providing a service means:

1 (a) The gross income received for building cleaning and
2 maintenance, pest control, and security;

3 (b) The gross income received for motor vehicle washing,
4 waxing, towing, and painting except as provided in section
5 77-2704.14;

6 (c) The gross income received for computer software
7 training;

8 (d) The gross income received for installing and applying
9 tangible personal property if the sale of the property is subject
10 to tax;

11 (e) The gross income received for labor by a contractor
12 except as provided in section 77-2704.55;

13 (f) The gross income received for services of
14 recreational vehicle parks;

15 (g) The gross income received for labor for repair or
16 maintenance services performed with regard to tangible personal
17 property the sale of which would be subject to sales and use taxes,
18 excluding motor vehicles, except as otherwise provided in section
19 77-2704.26 or 77-2704.50;

20 (h) The gross income received for animal specialty
21 services except (i) veterinary services and (ii) specialty services
22 performed on livestock as defined in section 54-183; and

23 (i) The gross income received for detective services.

24 (11) Gross receipts includes the sale of admissions which
25 means the right or privilege to have access to or to use a place or
26 location. When an admission to an activity is combined with the
27 solicitation of a contribution, the portion or the amount charged
28 representing the fair market price of the admission shall be

1 considered a retail sale subject to the tax imposed by section
2 77-2703. The organization conducting the activity shall determine
3 the amount properly attributable to the purchase of the privilege,
4 benefit, or other consideration in advance, and such amount shall
5 be clearly indicated on any ticket, receipt, or other evidence
6 issued in connection with the payment.

7 (12) Gross receipts includes the sale of live plants
8 incorporated into real estate except when such incorporation is
9 incidental to the transfer of an improvement upon real estate or
10 the real estate.

11 (13) Gross receipts includes the sale of any property
12 annexed to real estate and any associated labor by a person
13 electing to be taxed as a retailer pursuant to subdivision (1) of
14 section 77-2701.10.

15 (14) Gross receipts includes the sale of prepaid
16 telephone calling arrangements and the recharge of prepaid
17 telephone calling arrangements. If the sale or recharge of a
18 prepaid telephone calling arrangement does not take place at the
19 vendor's place of business, the sale or recharge shall be
20 conclusively determined to take place at the customer's shipping
21 address or, if there is no item shipped, at the customer's billing
22 address. For purposes of this subsection, a prepaid telephone
23 calling arrangement means the right to exclusively purchase
24 telecommunications services that are paid for in advance that
25 enables the origination of calls using an access number or
26 authorization code, whether manually or electronically dialed.

27 (15) Gross receipts does not include:

28 (a) The amount of any rebate granted by a motor vehicle

1 or motorboat manufacturer or dealer at the time of sale of the
2 motor vehicle or motorboat, which rebate functions as a discount
3 from the sales price of the motor vehicle or motorboat; or

4 (b) The price of property or services returned or
5 rejected by customers when the full sales price is refunded either
6 in cash or credit.

7 (16) Subsections (7) through (15) of this section become
8 operative on January 1, 2004.

9 (17) The Tax Commissioner shall hold a hearing on rules
10 and regulations to carry out the changes made to this section by
11 Laws 2003, LB 759. It is the intent of the Legislature that the
12 Tax Commissioner adopt and promulgate rules and regulations to
13 carry out such changes.

14 Sec. 2. Section 77-2704.14, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 77-2704.14. Sales and use taxes shall not be imposed on
17 the gross receipts from the sale, lease, or rental of and the
18 storage, use, or other consumption in this state of the use of
19 coin-operated machines used for laundering and cleaning ~~except~~
20 including the cleaning or washing of motor vehicles.

21 Sec. 3. This act becomes operative on October 1, 2004.

22 Sec. 4. Original sections 77-2701.16 and 77-2704.14,
23 Reissue Revised Statutes of Nebraska, are repealed.